



July 16, 2004

The Hon. Michael K. Powell, Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**RE: Ex Parte Communication, WC Docket 04-36, In the matter of IP-Enabled Services ("VoIP Docket")**

Dear Chairman Powell:

I am writing you as President of RNK Inc., d/b/a RNK Telecom ("RNK") to address issues currently under consideration in the Commission's VoIP Docket. Since 1998, RNK has been a competitive provider of retail and wholesale local exchange services, long-distance, pre-paid calling cards, and other innovative telecommunications services throughout the New England states, and beyond<sup>1</sup>. Recently, RNK began providing full-service IP-enabled voice telecommunications services *within* the "traditional" regulatory regime<sup>2</sup>. Given our unique circumstances, we bring a unique perspective to the current debate over the proper classification of the services currently offered by Vonage Holding Corp. ("Vonage"), RNK, and others, but also regarding the future regulatory framework surrounding IP-enabled services. In addition, we are concerned that because of the "regulatory stalemate" that now exists due to legal initiatives by Vonage and others, that public safety and protection are at risk. Finally, RNK believes that it is in the public interest for the Commission to apply the various consumer protection and public safety requirements outlined below and that states, in the interests of their respective citizens, should play a role in any regime the Commission promulgates.

➤ **SOME VOIP CARRIERS' "CAN'T DO" CLAIMS REGARDING VOIP TELEPHONY SERVICES ARE EXAGGERATED, MISTAKEN, AND MISPLACED.**

Some leading VoIP carriers, in this proceeding and in other forums, have argued that VoIP telephone service should not be classified as a "telecommunications service" under the Telecom Act or FCC rules because they are unable to perform routine tasks normally done by "traditional" telecommunications service providers. Some examples of these are:

- Access to 911 or E911 emergency services in a "traditional" manner;
- Porting of numbers from their service to other VoIP, wireline, or wireless carriers;
- Routing and rating of calls to the appropriate jurisdictional (intrastate vs. interstate) basis;
- Contributing to the Universal Service Program and related programs;
- Cooperation with law enforcement and compliance with CALEA;
- Complying with State and/or Federal "slamming" rules;
- Billing end-users in accordance with State and/or Federal "Truth-In-Billing" guidelines and providing trained, 24x7z365, customer service in accordance with state and federal mandates;
- Providing adequate quality of service and observation of network safety and reliability standards; and
- Adherence to established safeguards addressing the protection of customer privacy (CPNI) and suspension or termination of service.

All of these items are "standard" fare for "traditional" telecommunications carriers and most CMRS carriers. However, Vonage and others want to advertise their "phone" service, directly competing with traditional wireline and wireless service, without either incurring the costs or bearing the responsibilities of those with whom they compete.

➤ **RNK "CAN DO" THESE THINGS TODAY—AND RNK IS A TELECOMMUNICATIONS SERVICE PROVIDER.**

---

<sup>1</sup> RNK is currently certified to provide resold and/or facilities-based telephone services in the states of Connecticut, Florida, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Texas, and Vermont.

<sup>2</sup> RNK has currently effective tariffs for its residential and business local/toll Broadband Voice Services packages in New York, New Hampshire, and Rhode Island, and pending tariffs in other states.

The irony of Vonage's position, and others making similar arguments, is that although they say they are not providing "telecommunications services" because they are unable—or unwilling—to perform the functions mentioned above, the fact is that they cannot, will not, or are not required to do those things precisely because they are not presently regulated as telecommunications carriers. Because RNK has telecommunications carrier status in the jurisdictions where we operate, we diligently pursue our public interest obligations to work with public safety and law enforcement, to collect and remit taxes and USF funds, and to ensure that customer protections are afforded to our subscribers. RNK believes that the public—whose safety and security are entrusted to you—demands no less from all telecom providers, whether VoIP or not.

RNK's Broadband Voice Services **currently** provide near-identical functionality as traditional circuit-switched voice lines. For example, at sign-up, an RNK customer provides the physical location where the service is being used. That location information is then populated in appropriate E911 databases, which ensures proper routing of emergency calls to the PSAP through the existing selective router/tandem, just like any facilities-based local service. RNK obtains its own<sup>3</sup> numbering resources directly from the NANP Administrator and Pooling Administrator. Requests from end users to port their existing telephone numbers to or from other carriers are handled as a matter of course. RNK is also compliant with all state and Federal rules, laws, and regulations with respect to billing, anti-slamming, and customer relations. RNK is, has been, and will be interconnected with other LECs and IXC's for the transport and termination of traffic to the rest of the public switched network. These facts beg the question: why are Vonage and similar carriers trying to avoid providing "real" telephone service? More to the point, why should VoIP telephony carriers, such as RNK or Vonage, be treated differently from other wireline or wireless telecommunications services, when they are, in fact, no different from their traditional brethren?

➤ **THE COMMISSION SHOULD ADOPT A REGULATORY REGIME THAT GUARANTEES FAIR COMPETITION FOR SERVICES THAT ARE—OR THAT ARE TRUE SUBSTITUTES FOR—TRADITIONAL TELECOMMUNICATIONS SERVICES.**

Sadly, it appears that the answer lies in the desire to reap the benefits of selling telephony and telecommunications services without the associated regulatory or industry responsibilities and costs. Clearly, this is a classic case of regulatory arbitrage, where telecom services that traverse the Internet—and the companies that provide them—are afforded "special treatment," to the detriment of consumers and competitors. The FCC has already ruled against AT&T for its policy of treating PSTN originated and terminated calls that use VoIP for long haul transport as non-access calls as regulatory arbitrage, but at least AT&T was properly authorized to provide that service.

Moreover, RNK believes that within that **appropriate** regulatory framework, VoIP can help fulfill the promises embodied in the Telecommunications Act of 1996, maximize consumer choice and efficiency, improve the viability of the telecommunications sector of the American economy, and promote public safety and security.

In fact, RNK has pursued its current course, of submitting its services to existing wireline regulation, precisely because such a framework is a known quantity to both consumers and potential investors. Potential business and wholesale customers, justifiably, do not want to risk paying for a service that merely purports to offer similar functionality to current wireline services for a lower price without assurance that their provider is offering a product that will survive and whose pricing will not increase drastically due to regulatory decisions. Likewise, residential consumers should not be placed in the position that they may have to compromise their safety and security in order to obtain affordable, yet cutting-edge, telecommunications services. Investors should not be expected to provide much-needed capital to innovative companies like RNK if the status quo (i.e., either a murky or non-existent regulatory universe) were to persist. Those taking a risk by failing to observe existing rules simply because another new medium exists do so at their own peril. By operating within the existing regulatory framework, already streamlined for competitive telephone providers, RNK has won the confidence of investors, average residential consumers, and sophisticated business customers in bringing its innovative telecommunications products to the market.

---

<sup>3</sup> Because it is not a regulated local exchange carrier, Vonage and other non-carrier VoIP providers must purchase telephone numbers and transport from other carriers to add to their end user VoIP services, which raises significant issues when Vonage's customers want to switch to another VoIP or other carrier, as Vonage, as a non-carrier and itself the potential end user of the phone service, has no responsibility to allow portability, which forces Vonage's customers to relinquish their original telephone number to switch service providers, contrary to the intent of all of the Commission's portability orders.

RNK firmly believes that the Commission should adopt rules and safeguards that not only guarantee fair competition among LECs, IXCs, IP-enabled voice carriers, cable telephony providers, and wireless carriers, but also that allow non-discriminatory access to broadband platforms of all current and future providers of IP-enabled services and their end users. Without non-discriminatory access to broadband platforms and end-users using those platforms, the type of vibrant, innovative, intermodal competition the FCC has brought to fruition over the past twenty years will suffer greatly.

Specifically, RNK strongly urges the Commission to follow the following principles<sup>4</sup> in making its determinations regarding the regulatory treatment of IP-enabled services like those of Vonage and RNK:

- (1) ***Voice services that are “functionally” equivalent to that of “traditional” telecommunications are in fact, and should be treated as, “telecommunications services.”*** Hence, both RNK’s Broadband Voice Services and similar services are “telecommunications services” according to the Telecom Act and the Commission’s rules.
- (2) ***Providers of telecommunications services, regardless of the technology used to provision them, should be subject to the same legal obligations.*** Ideally, these regulations should have as minimal an effect as is necessary. However, one industry segment or technology should not be “favored” over any other. RNK agrees with many other providers, including Vonage, that legacy price regulation is outmoded and unnecessary. We believe that the current framework of common carrier regulation, narrowly tailored and applied as lightly as possible—and equally to all telecommunications service providers—will engender confidence both from consumers and investors in the IP-enabled telecommunications sector. RNK believes that states have a role to play in this regulatory framework, but the Commission should set “the bar” for necessary regulations and allow state to expand upon those requirements in the interests of their citizens.
- (3) ***More specifically, IP-enabled telecommunications providers should abide by industry-wide standards for customer migration, interconnection of networks, and intercarrier compensation.*** Not only should IP-enabled telecom providers be treated as telecommunications carriers, but also they should acquire and port numbers, treat customer information according to CPNI rules, transmit and receive CSR information when customers seek to migrate carriers. Although RNK agrees with many others that the current intercarrier compensation regime needs some reforms, we believe that all providers should pay and be paid according to the types of access and carriage they functionally provide in accordance with current rules and regulations, with a tiered-down transition using a unitary rate over a few years to bill-and-keep.
- (4) ***“Bottleneck” providers of broadband services, such as DSL carriers and cable modem providers should provide non-discriminatory carriage of IP-enabled telecommunications services.*** This is especially true of providers who may have competing service offerings, such as DSL carriers and cable modem service providers. LECs should be prohibited from conditioning subscription to DSL on subscription to POTS or other wireline services, or alternatively, should be required to offer DSL as a “stand-alone” product, unlike some current ILECs. No broadband provider should be able to discriminatorily block or “de-prioritize” packets used for IP-enabled telecommunications service, nor should they be permitted to unreasonably prevent the attachment of devices or use of software that facilitates such services.
- (5) ***The nature of VoIP telecommunications services demands a regulatory framework that depends on the types of telecommunications being provided.*** In our experience in this emerging market, we have found that consumers are demanding two types of services: (1) a more mobile service for placing outbound interstate and international long distance calls (“Long Distance VoIP”) and (2) a more stationary service to substitute for traditional wireline local exchange services “VoIP Local Exchange Services”. Long Distance VoIP should be subject to the existing lightened regulatory regime currently afforded to non-dominant domestic and international interexchange carriers, including forbearance from tariffing requirements, lightened reporting and registration requirements, adherence to anti-slamming, and anti-cramming rules, and payment of Universal Service contributions. Long

---

<sup>4</sup> For a more detailed legal and policy exposition of these principles, please refer to RNK’s Reply Comments (filed July 14, 2004) in the above-captioned proceeding.

Distance VoIP carriers should not be subject to state regulation—even to the extent that intrastate calls are made—but these products should be clearly differentiated, with clear warnings that these products do not access E911 and are not substitutes for Local Exchange Service. VoIP Local Exchange Services should be subject to the same streamlined state requirements that traditional competitive local exchange services, including filing of terms and conditions, access to “true” E911 (based on the primary service location of the customers), traditional assignment of NPA-NXX’s, and state consumer protection and network stability standards. That said, to the extent that a carrier would provide both services as a bundled package, federal requirements would apply to the interstate/international calls or portion of the bundle, while state responsibility would extend to the intrastate portion or calls. Jurisdiction of calls would be based on the originating and terminating NPA-NXX. Flat-rate bundles should be subject to inter-/intra-state apportionment for purposes of determining USF and/or tax liability. This “dual” approach, will allow both that the state commissions are allowed to fulfill their mandate to protect consumers and maintain service quality, but also develop competition in this emerging sector.

- (6) ***In the interim, for the sake of public safety, the Commission should give states immediate authority to enforce 911/E911 requirements.*** RNK strongly urges that the Commission should take, because of the public safety interests that are inherent in the provision of telephone service, the extraordinary step of delegating, until or unless the Commission should make its final findings in this docket, explicit interim authority to the states to implement their E911 requirements immediately. Although we fully acknowledge the complexity of the issues raised by all parties in this docket, threats to human life and property clearly outweigh any of the jurisdictional, legal, or financial concerns raised by these services.

RNK believes that by using these guiding principles in determining the regulatory framework for IP-enabled services, the Commission will not waste the opportunity that this docket affords it—to ensure that the pro-competitive, deregulatory vision of the Telecommunications Act is realized, while promoting true competition and enhancing the safety and security of America’s communications networks. I would be more than happy to expound on RNK’s vision to you, your fellow Commissioners, and Commission staff in person. Do not hesitate to contact me: I can be reached at (781) 613-6126, or by e-mail at [rich@mkstel.com](mailto:rich@mkstel.com).

Sincerely,

/s/

Richard N. Koch  
President, RNK Inc. d/b/a RNK Telecom

Cc: Office of the Secretary, Federal Communications Commission (“FCC”)  
The Hon. George W. Bush, President of the United States of America  
Sen. John Kerry, Candidate for President of the United States of America  
FCC Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, and Jonathan S. Adelstein.  
Hon. Stan Wise (Commissioner, Georgia PSC), President, and Charles Gray, Executive Director, NARUC  
Sen. John McCain, Chairman & Sen. Ernest F. Hollings, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation  
Rep. Joe Barton, Chairman, and Rep. John D. Dingell, Ranking Member, House Committee on Energy and Commerce

Ivan G. Seidenberg, Chairman and Chief Executive Officer, Verizon Communications, Inc.  
F. Duane Ackerman, Chairman of the Board, President and CEO, BellSouth Corporation  
Edward E. Whitacre Jr., Chairman of the Board and Chief Executive Officer, SBC Communications Inc.  
Richard C. Notebaert, Chairman and Chief Executive Officer, Qwest Communications International Inc.